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HEADS UP!

GOOD NEWS: WAGE CLAIMS MUST BE ARBITRATED

In October, 2013 the California Supreme Court ruled that employers may require employees and former employees to submit wage claims to arbitration.

Prior to this, such claims were among the very few categories of disputes that were not, as a matter of law, subject to mandatory arbitration agreements.

As a result, employees were able to prosecute overtime, meal and rest period, and other wage/hour claims through the California Labor Commissioner, an administrative agency that is infamously pro-employee.

Although the employer can appeal an unfavorable ruling, the Labor Commissioner typically provides legal counsel at no charge to the claimant during the prosecution of the appeal.

If the claimant is the "prevailing party" in the appeal, he/she may recover his/her attorney fees, which often dwarf the amount of the award being appealed. Even a nominal award on the wage claim can yield this result, even if it is less than the amount previously awarded by the Labor Commissioner.

Even more significant, and disturbing, is that a claimant who "prevails" on appeal is entitled to an award of attorneys' fees, even though that party never actually paid any attorneys' fees. In such cases, the amount awarded is based on the time required by the Labor Commissioner's lawyers, at the hourly rate of attorneys with similar experience. Any award will be applied to reimbursing that agency for the value of its attorneys' time.

In order to take advantage of this recent ruling, the employer's arbitration and other written policies must be carefully drafted and thoroughly consistent internally, as well as consistent with other written policies on related subjects.